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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,531	11/30/2005	Josephus Jan Emeis	VER-191XX	4249

207 7590 12/12/2007

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EXAMINER	
OGUNBIYI, OLUWATOSIN A	
ART UNIT	**PAPER NUMBER**
1645	

MAIL DATE	DELIVERY MODE
12/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/538,531	EMEIS ET AL.	
	Examiner	Art Unit	
	Oluwatosin Ogunbiyi	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-16 is/are pending in the application.

4a) Of the above claim(s) 5,10-13,15 and 16 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-4,6-9 and 14 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 10 June 2005 is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 6/10/05.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Amendments to the claims 6/10/2005 has been entered into the record.

Claims 1-16 are pending in the application. Claims 1-4, 6-9 and14 are under examination. Claims 5, 10-13, 15 and 16 are withdrawn as drawn to a non-elected invention.

Election/Restrictions

Restriction is required under 35 U.S.S. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I: claims 1-4, 6-9 and 14 drawn to a preparation comprising *Rhodospirillum spp* and/or *Phaeospirillum spp.*

Group II: claims 5,10-13,15 and 16, drawn to use of a preparation use of a preparation of *Rhodospirillum spp.* and/or *Phaeospirillum spp.* for the production of a medicament for lowering plasma cholesterol; a method for the production of a preparation of *Rhodospirillum spp.* and/or *Phaeospirillum spp.*, comprising culturing one or more cells of *Rhodospirillum spp.* and/or *Phaeospirillum spp.* to a multi-cellular culture, harvesting said culture, and processing the cells of said culture into a preparation and a method for the production of a foodstuff, comprising incorporating a food supplement according to into a foodstuff.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCR Rule 13.1 because, under PCT rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature of the first named invention (Group I), which is a preparation comprising *Rhodospirillum spp* and/or *Phaeospirillum spp* is anticipated by the art and therefore not "special" within the meaning of PCT rule 13.2 because it does not provide for a contribution that the claimed invention makes over the art. Kobayashi et al (JP 08205819 A, August 13 1996) teaches a preparation of *Rhodospirillum spp.*

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected invention.**

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48() if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Notice of Possible Rejoinder

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP §

804.01.

Applicant's Election of an Invention and Specie

During a telephone conversation with Mr. Charles Gagnebin on 11/27/07 a provisional election was made with *traverse* to prosecute the invention of Group I, claims 1-4,6-9 and 14.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 5, 10-13,15 and 16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention and species.

Priority

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement filed 6/10/05 has been considered. An initialed copy is enclosed.

Drawings

The drawings are objected to because: Drawings have language other than English.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures

appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

Claim 1-2,4, 6-9 and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are drawn to a preparation of *Rhodospirillum spp* and/or *Phaeospirillum spp* for the production of a medicament for lowering plasma cholesterol.

The invention as claimed is drawn to a product of nature i.e. *Rhodospirillum spp* and/or *Phaeospirillum spp*. Products of nature are not patentable because they do not reflect the "hand of man" in the production of the product or manufacturing process. Recitation of "isolation" provided there is support in the specification, will reflect the hand of man.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi et al, JP 08-205819 8/13/1996 (translation provided).

The claims are drawn to a preparation of *Rhodospirillum spp* for the production of a medicament for lowering plasma cholesterol.

Kobayashi teaches a preparation of *Rhodospirillum spp* (abstract). Kobayashi et al also teaches a preparation of live (culture mixture) or dried cells of *Rhodospirillum spp* wherein said live or dried cells inherently comprise a membrane fraction of *Rhodospirillum spp* (abstract). Kobayashi et al teaches said *Rhodospirillum spp* in an excipient such as milk (see paragraph 28 of machine translation of Kobayashi et al). Kobayashi teaches said *Rhodospirillum spp* as a food additive or supplement to food/drink/foodstuff wherein said *Rhodospirillum spp* inherently comprises a membrane fraction of live or freeze dried cells of said *Rhodospirillum spp* (abstract, paragraphs 1, 5, 18, 23, 24, 26-29). Recitations of uses of the instantly claimed *Rhodospirillum spp* as a medicament, plasma cholesterol lowering, probiotic, food supplement are all intended uses and do not structurally distinguish the claimed product from the product of the prior art and therefore is not given patentable weight for the claimed product.

Claims 1-4, 6-9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Mengjun et al, CN 1274584 11/29/2000 (translation attached).

The claims are drawn to a preparation of *Rhodospirillum spp* for the production of a medicament for lowering plasma cholesterol.

Mengjun et al teaches a preparation of *Rhodospirillum spp* (p.2 claim 1). Mengjun et al also teaches a preparation dried cells and live cells *Rhodospirillum spp* wherein said dried cells or live cells inherently comprise a membrane fraction of *Rhodospirillum spp* (p. 2 claim 1, p. 6, p. 13). Mengjun et al teaches *Rhodospirillum spp* in one or more excipients such as capsule or a culture medium (see p. 14-15). Thus, Mengjun packages *Rhodospirillum spp* in a pharmaceutical excipient and in a pharmaceutical dosage form (capsule). Mengjun teaches said live *Rhodospirillum spp* as a food additive or supplement to food (drink) wherein said *Rhodospirillum spp* inherently comprises a membrane fraction (see p. 14-15). Recitations of uses of the instantly claimed *Rhodospirillum spp* as a medicament, plasma cholesterol lowering, probiotic, food supplement are all intended uses and do not structurally distinguish the claimed product from the product of the prior art and therefore is not given patentable weight for the claimed product.

Claims 1-4, 6-9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang et al, CN 11172653 02/11/1998 (translation attached).

The claims are drawn to a preparation of *Rhodospirillum spp* for the production of a medicament for lowering plasma cholesterol.

Wang et al teaches a preparation of *Rhodospirillum spp* (p.2 claim 1). Wang et al also teaches a preparation of live Rhodospirillum *spp* culture (claim 1, p. 6-7) and freeze dried *Rhodospirillum spp* (p. 2 claim 1, p. 8) wherein said dried or live *Rhodospirillum spp* inherently comprise a membrane fraction. Wang et al teaches *Rhodospirillum spp* in one or more excipients which act as a carrier for said *Rhodospirillum spp* such as saccharin sodium, orange essence (p. 3 last

sentence), a mix of rice flour, corn flour, milk powder etc which is packaged in a capsule (p. 4 first paragraph, p. 8). Thus, Wang packages *Rhodospirillum spp* in pharmaceutical excipients and in a pharmaceutical dosage form (capsule). Wang teaches said live or freeze dried *Rhodospirillum spp* as a food additive or supplement to food (drink) wherein said *Rhodospirillum spp* inherently comprises a membrane fraction (p. 2 claim 1). Recitations of uses of the instantly claimed *Rhodospirillum spp* as a medicament, plasma cholesterol lowering, probiotic, food supplement are all intended uses and do not structurally distinguish the claimed product from the product of the prior art and therefore is not given patentable weight for the claimed product.

Claims 1,2,4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by ATCC® Bacteria and Bacteriophages catalog, 1996 p. 108 as evidenced by Imhoff et al. International Journal of Systematic Bacteriology (1998) 48:793-798.

The claims are drawn to a preparation of *Rhodospirillum spp.* or *Phaeospirillum spp.* for the production of a medicament for lowering plasma cholesterol.

ATCC® catalog et al teaches preparations of a variety of live *Rhodospirillum spp* that are freeze dried or frozen (p.108 left column) wherein said *Rhodospirillum spp* inherently comprise a membrane fraction. Recitations of uses of the instantly claimed *Rhodospirillum spp* as a medicament, plasma cholesterol lowering, probiotic, food supplement are all intended uses and do not structurally distinguish the claimed product from the product of the prior art and therefore is not given patentable weight for the claimed product.

ATCC® catalog teaches *Rhodospirillum fulvum* and *Rhodospirillum molischianum* which have been taxonomically reclassified as *Phaeospirillum spp* as evidenced by Imhoff et al (see abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over ATCC® Bacteria and Bacteriophages catalog, 1996 p. 108 in view of Imhoff et al. International Journal of Systematic Bacteriology (1998) 48:793-798 and Wang et al, CN 11172653 02/11/1998.

The claims are drawn to a pharmaceutical preparation comprising a preparation of *Rhodospirillum spp and/or Phaeospirillum spp* and one or more excipients.

ATCC® catalog et al teaches preparations of a variety of live *Rhodospirillum spp* that are freeze dried or frozen (p.108 left column) wherein said *Rhodospirillum spp* necessarily comprise a membrane fraction. Recitations of uses of the instantly claimed *Rhodospirillum spp* as a medicament, plasma cholesterol lowering, probiotic, food supplement are all intended uses and do not structurally distinguish the claimed product from the product of the prior art and therefore is not given patentable weight for the claimed product.

ATCC® catalog teaches *Rhodospirillum fulvum* and *Rhodospirillum molischianum* which have been taxonomically reclassified as *Phaeospirillum spp* as taught by Imhoff et al (see abstract).

ATCC® catalog does not teach one or more excipients with a preparation of *Rhodospirillum spp* and/or *Phaeospirillum spp*.

Wang et al teaches *Rhodospirillum spp* in one or more excipients which act as a carrier for said *Rhodospirillum spp* such as saccharin sodium, orange essence (p. 3 last sentence), a mix of rice flour, corn flour, milk powder etc which is packaged in a capsule (p. 4 first paragraph, p. 8). Thus, Wang packages *Rhodospirillum spp* in pharmaceutical excipients and in a pharmaceutical dosage form (capsule). Wang also teaches the medicinal properties of *Rhodospirillum spp* (p. 4 claim 3) and teaches preparations of one or more *Rhodospirillum spp* (p. 5 last paragraph to p. 6).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to try to add one or more excipients to a preparation of *Rhodospirillum spp* or *Phaeospirillum spp* or to a preparation comprising all of the *Rhodospirillum spp* and *Phaeospirillum spp* of ATCC® catalog to make a pharmaceutical preparation because Wang et al teaches packaging of one or more *Rhodospirillum* bacteria in excipients (which act as a carrier for said *Rhodospirillum* for medicinal purposes) and teaches pharmaceutical dosage forms (capsules) of *Rhodospirillum spp*.

Claims 6, 7, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over ATCC® Bacteria and Bacteriophages catalog, 1996 p. 108 in view of Imhoff et al. International Journal of Systematic Bacteriology (1998) and Mengjun et al, CN 1274584 11/29/2000.

The claims are drawn to a foodstuff comprising a preparation of *Rhodospirillum spp* and/or *Phaeospirillum spp.* for the production of a medicament for lowering plasma cholesterol.

ATCC® catalog et al teaches preparations of a variety of live *Rhodospirillum spp* that are freeze dried or frozen (p.108 left column) wherein said *Rhodospirillum spp* necessarily comprise a membrane fraction. Recitations of uses of the instantly claimed *Rhodospirillum spp* as a medicament, plasma cholesterol lowering, probiotic, food supplement are all intended uses and do not structurally distinguish the claimed product from the product of the prior art and therefore is not given patentable weight for the claimed product.

ATCC® catalog teaches *Rhodospirillum fulvum* and *Rhodospirillum molischianum* which have been taxonomically reclassified as *Phaeospirillum spp* as taught by Imhoff et al (see abstract).

ATCC® catalog does not teach a food stuff comprising *Rhodospirillum spp* and/or *Phaeospirillum spp.*

Mengjun teaches said live *Rhodospirillum spp* in food (drink) wherein said *Rhodospirillum spp* necessarily comprises a membrane fraction (see p. 14-15). Mengjun teach the medical benefits of *Rhodospirillum spp* (see abstract).

It would have been prima facie obvious to one of ordinary skill in the art at the time the instant invention was made to try to add one or all of the *Rhodospirillum spp* or *Phaeospirillum spp* of ATCC® catalog to food as taught by Mengjun et al because Mengjun et al teach *Rhodospirillum spp* in food for medicinal purposes.

Claims 1-4, 6-9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al, JP 08-205819 8/13/1996 (translation provided) in view of Imhoff et al. International Journal of Systematic Bacteriology (1998) 48:793-798 and ATCC® Bacteria and Bacteriophages catalog, 1996 p. 108 and Wang et al, CN 11172653 02/11/1998.

The claims are drawn to a preparation of *Rhodospirillum spp and Phaeospirillum spp* for the production of a medicament for lowering plasma cholesterol.

Kobayashi teaches a preparation of *Rhodospirillum spp* (abstract). Kobayashi et al also teaches a preparation of live (culture mixture) or dried cells of *Rhodospirillum spp* wherein said live or dried cells inherently comprise a membrane fraction of *Rhodospirillum spp* (abstract). Kobayashi et al teaches said *Rhodospirillum spp* in an excipient suitable such as milk (see paragraph 28 of machine translation of Kobayashi et al). Kobayashi teaches said *Rhodospirillum spp* as a food additive or supplement to food/drink/foodstuff wherein said *Rhodospirillum spp* necessarily comprises a membrane fraction of live or freeze dried cells of said *Rhodospirillum spp* (abstract, paragraphs 1, 5, 18, 23, 24, 26-29). Recitations of uses of the instantly claimed *Rhodospirillum spp* as a medicament, plasma cholesterol lowering, probiotic, food supplement are all intended uses and do not structurally distinguish the claimed product from the product of the prior art and therefore is not given patentable weight for the claimed product.

Kobayashi does not teach preparations of *Rhodospirillum spp and Phaeospirillum spp.*

ATCC® catalog et al teaches preparations of a variety of live *Rhodospirillum spp* that are freeze dried or frozen (p.108 left column). ATCC® catalog teaches *Rhodospirillum fulvum* and *Rhodospirillum molischianum* which have been taxonomically reclassified as *Phaeospirillum spp* as taught by Imhoff et al (see abstract).

Wang et al also teaches the medicinal properties of *Rhodospirillum spp* (p. 4 claim 3) and teaches pharmaceutical preparations of one or more *Rhodospirillum spp* (p. 5 last paragraph to p. 6).

It would have been prima facie obvious to one of ordinary skill in the art at the time the instant invention was made to try to include *Rhodospirillum spp* and *Phaeospirillum spp* in the preparation of Kobayashi et al as taught by Wang et al because Wang et al teaches packaging of one or more *Rhodospirillum* bacteria in excipients and teaches the medicinal benefits of *Rhodospirillum* spp and ATCC catalog teaches different types of *Rhodospirillum spp* including *Rhodospirillum fulvum* and *Rhodospirillum molischianum* which have been taxonomically reclassified as *Phaeospirillum spp* as taught by Imhoff et al (see abstract).

Claims 1-4, 6-9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mengjun et al, CN 1274584 11/29/2000 (translation attached) in view of Imhoff et al. International Journal of Systematic Bacteriology (1998) 48:793-798 and ATCC® Bacteria and Bacteriophages catalog, 1996 p. 108 and Wang et al, CN 11172653 02/11/1998.

The claims are drawn to a preparation of *Rhodospirillum spp and Phaeospirillum spp* for the production of a medicament for lowering plasma cholesterol.

Mengjun et al teaches a preparation of *Rhodospirillum spp* (p.2 claim 1). Mengjun et al also teaches a preparation dried cells and live cells *Rhodospirillum spp* wherein said dried cells or live cells inherently comprise a membrane fraction of *Rhodospirillum spp* (p. 2 claim 1, p. 6, p. 13). Mengjun et al teaches *Rhodospirillum spp* in one or excipients such as capsule or a culture medium (see p. 14-15). Mengjun teaches said live *Rhodospirillum spp* as a food additive or supplement to food (drink) wherein said *Rhodospirillum spp* necessarily comprises a membrane fraction (see p. 14-15). Recitations of uses

of the instantly claimed *Rhodospirillum spp* as a medicament, plasma cholesterol lowering, probiotic, food supplement are all intended uses and do not structurally distinguish the claimed product from the product of the prior art and therefore is not given patentable weight for the claimed product.

Mengjun does not teach preparations of *Rhodospirillum spp and Phaeospirillum spp.*

ATCC® catalog et al teaches preparations of a variety of live *Rhodospirillum spp* that are freeze dried or frozen (p.108 left column). ATCC® catalog teaches *Rhodospirillum fulvum* and *Rhodospirillum molischianum* which have been taxonomically reclassified as *Phaeospirillum spp* as taught by Imhoff et al (see abstract).

Wang et al also teaches the medicinal properties of *Rhodospirillum spp* (p. 4 claim 3) and teaches pharmaceutical preparations of one or more *Rhodospirillum spp* (p. 5 last paragraph to p. 6).

It would have been prima facie obvious to one of ordinary skill in the art at the time the instant invention was made to try to include *Rhodospirillum spp* and *Phaeospirillum spp* in the preparation of Mengjun et al as taught by Wang et al because Wang et al teaches packaging of one or more *Rhodospirillum* bacteria in excipients and teaches the medicinal benefits of *Rhodospirillum* spp and ATCC catalog teaches different types of *Rhodospirillum spp* such as *Rhodospirillum fulvum* and *Rhodospirillum molischianum* which have been taxonomically reclassified as *Phaeospirillum spp* as taught by Imhoff et al (see abstract).

Claims 1-4, 6-9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al, CN 11172653 02/11/1998 (translation attached). in view of Imhoff et al. International Journal of Systematic Bacteriology (1998) and ATCC® Bacteria and Bacteriophages catalog, 1996 p. 108 48:793-798.

The claims are drawn to a preparation of *Rhodospirillum spp and Phaeospirillum spp* for the production of a medicament for lowering plasma cholesterol.

Wang et al teaches a preparation of *Rhodospirillum spp* (p.2 claim 1). Wang et al also teaches a preparation of live Rhodospirillum *spp* culture (claim 1, p. 6-7) and freeze dried *Rhodospirillum spp* (p. 2 claim 1, p. 8) wherein said dried or live *Rhodospirillum spp* inherently comprise a membrane fraction. Wang et al teaches *Rhodospirillum spp* in one or more excipients which act as a carrier for said *Rhodospirillum spp* such as saccharin sodium, orange essence (p. 3 last sentence), a mix of rice flour, corn flour, milk powder etc which is packaged in a capsule (p. 4 first paragraph, p. 8). Thus, Wang packages *Rhodospirillum spp* in pharmaceutical excipients and in a pharmaceutical dosage form (capsule). Wang teaches said live or freeze dried *Rhodospirillum spp* as a food additive or supplement to food (drink) wherein said *Rhodospirillum spp* inherently comprises a membrane fraction (p. 2 claim 1). Wang et al also teaches the medicinal properties of *Rhodospirillum spp* (p. 4 claim 3) and teaches pharmaceutical preparations of one or more *Rhodospirillum spp* (p. 5 last paragraph to p. 6).

Recitations of uses of the instantly claimed *Rhodospirillum spp* as a medicament, plasma cholesterol lowering, probiotic, food supplement are all intended uses and do not structurally distinguish the claimed product from the product of the prior art and therefore is not given patentable weight for the claimed product.

Wang et al does not teach preparations of *Rhodospirillum spp and Phaeospirillum spp.*

ATCC® catalog et al teaches preparations of a variety of live *Rhodospirillum spp* that are freeze dried or frozen (p.108 left column). ATCC® catalog teaches *Rhodospirillum fulvum* and *Rhodospirillum molischianum* which have been taxonomically reclassified as *Phaeospirillum spp* as taught by Imhoff et al (see abstract).

It would have been prima facie obvious to one of ordinary skill in the art at the time the instant invention was made to try to include *Phaeospirillum spp* in the preparation of *Rhodospirillum spp of* Wang et al because ATCC catalog teaches different types of *Rhodospirillum spp* such as *Rhodospirillum fulvum* and *Rhodospirillum molischianum* which have been taxonomically reclassified as *Phaeospirillum spp* as taught by Imhoff et al (see abstract).

Status of the Claims

Claims 1-4, 6-9 and 14 are rejected. No claims allowed.

Conclusion

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Oluwatosin Ogunbiyi whose telephone number is 571-272-9939. The examiner can normally be reached on M-F 8:30 am - 5:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisory Examiner Shanon Foley can be reached on 571-272-0898.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Oluwatosin Ogunbiyi
Examiner
Art Unit 1645

PATRICIA A. DUFFY
PRIMARY EXAMINER